

Reissue Litigation
Group #3621

Our Reference: CBC-122-C

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:

Richard C. Wilson and
Patrick M. Culpepper

Serial Number:

09/391,294

Filing Date:

September 7, 1999

Examiner/Art Group Unit:

Unknown/3621

Title:

CORNER POST SUPPORT MEMBER

COMMUNICATION

Assistant Commissioner of Patents
Washington, D.C. 20231
BOX: 7

GROUP 3600

OCT 18 1999

RECEIVED

Sir:

Enclosed are the following documents from
litigation regarding U.S. Patent No. 5,664,376 which may
be material to patentability.

- A. Complaint for Infringement Of Patents.
- B. Answer and Counterclaims.
- C. Plaintiff's Answers to Counterclaims.

As available, other relevant documents will be
submitted for the subject reissue application.

Respectfully submitted,

YOUNG & BASILE, P.C.

Darlene P. Condra

Darlene P. Condra
Attorney for Applicant(s)
Registration No. 37113
(248) 649-3333

3001 West Big Beaver Rd., Suite 624
Troy, Michigan 48084-3107

Dated: October 7, 1999
DPC/cmp

Reissue Litigation
Group # 362)
Lachm OSC

Our Reference: CBC-122-C

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:

Richard C. Wilson and
Patrick M. Culpepper

Serial Number:

09/391,294

Filing Date:

September 7, 1999

Examiner/Art Group Unit:

Unknown/3621

Title:

CORNER POST SUPPORT MEMBER

CERTIFICATE OF MAILING AND TRANSMITTAL LETTER

Assistant Commissioner of Patents
Washington, D.C. 20231

GROUP 3600

Sir:

OCT 18 1999

Transmitted with this document is a **RECEIVED**
Communication; Complaint for Infringement of Patents;
Answer and Counterclaims; and Plaintiff's Answers to
Counterclaims in the above-identified application.

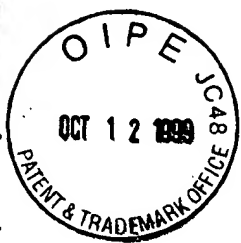
- ☒ No additional fee is required.
- ☐ A check in the amount of \$0.00 is attached.
- ☐ Charge \$.00 to Deposit Account Number 25-0115.
- ☒ Please charge any deficiency or credit any
excess in the enclosed fees to Deposit Account
Number 25-0115.

I hereby certify that this correspondence is being
deposited with the United States Postal Service as First
Class Mail in an envelope addressed to: Assistant
Commissioner of Patents, Washington, D.C. 20231, on
October 7, 1999.

Darlene P. Condra

Darlene P. Condra
Attorney for Applicant
Registration No. 37113
(248) 649-3333

YOUNG & BASILE, P.C.
3001 West Big Beaver Road
Suite 624
Troy, MI 48084-3107



UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

#2
11-19-99
me

ABCO, INC. d/b/a
PROGRESSIVE FOAM PRODUCTS,
an Ohio corporation,

Plaintiff,

v.

DIVERSIFOAM PRODUCTS, INC.

Defendants.

Case No.:

Judge:

COMPLAINT FOR INFRINGEMENT
OF PATENTS

JURY DEMAND

Thomas N. Young (P22656)
Andrew R. Basile (P10519)
Thomas E. Bejin (P56854)
YOUNG & BASILE, P.C.
3001 W. Big Beaver Rd., Ste. 624
Troy, MI 48084-3107
(248) 649-3333
Attorneys for Plaintiff

Phillip L. Kenner (#0018264)
Ray L. Weber (#0006497)
RENNER, KENNER, GRIEVE, BOBAK,
TAYLOR & WEBER, L.P.A.
Sixteenth Floor, First National Tower
Akron, Ohio 44308-1456
(330) 376-1242
Attorneys for Plaintiff

GROUP 3600
OCT 18 1999
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Now comes Plaintiff, ABCO, Inc. d/b/a Progressive Foam Products, Inc. to complain against the Defendant DiversiFoam Products, Inc. for patent infringement as follows:



THE PARTIES

1. Plaintiff ABCO, Inc. (ABCO), is a corporation of the State of Ohio, having a principal place of business at 6753 Chestnut Ridge Road, Beach City, Ohio 44608 within this judicial district.
2. Defendant DiversiFoam Products, Inc. (DiversiFoam) is, on information and belief, a corporation of the State of Minnesota and has its principal place of business at 9091 County Road 50, Rockford, Minnesota 55373.

JURISDICTION AND VENUE

3. Defendant has sold and offered to sell infringing products within this judicial district.
4. Jurisdiction for this action is based on the existence of a federal question under the patent laws of the United States, 35 U.S.C. 1 et seq. and 28 U.S.C. § 1338(a).
5. Venue is based on 28 U.S.C. § 1391(b) and (c) and 28 U.S.C. § 1400.

COUNT I PATENT INFRINGEMENT

6. The allegations of paragraphs 1-5 are incorporated into this count by reference as if set forth again in full.

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Group #3621*

7. Plaintiff is the owner by assignment of United States Patent No. 5,542,222, "Corner Post Support Member" (attached hereto as Exhibit A) which was duly issued by the United States Patent and Trademark Office on August 6, 1996.

8. Defendant DiversiFoam, without authority or license from plaintiff, has within the six year period immediately prior to the filing of this complaint, manufactured and sold corner post support members of a type and design which correspond to the invention of U.S. Patent No. ~~5,542,222~~ in violation of plaintiff's rights as set forth in 35 U.S.C. § 271.

9. Plaintiff has been damaged by the acts of DiversiFoam as aforesaid to an extent and in an amount which can only be determined by and through an accounting.

10. The acts of infringement by the defendants as aforesaid have been with knowledge of the existence of the aforesaid patent and willful so as to justify an increase in damages pursuant to 35 U.S.C. § 284.

COUNT II

PATENT INFRINGEMENT

11. The allegations of paragraphs 1-10 are incorporated into this count by reference as if set forth again in full.

12. Plaintiff is the owner by assignment of United States Patent No. 5,664,376, "Corner Post Support Member" (attached hereto as Exhibit B) which was duly issued by the United States Patent and Trademark Office on September 9, 1997.

13. Defendant DiversiFoam, without authority or license from plaintiff, has within the six year period immediately prior to the filing of this complaint manufactured and sold corner

post support members of a type and design which correspond to the invention of U.S. Patent No. 5,664,376 in violation of plaintiff's rights as set forth in 35 U.S.C. § 271.

14. Plaintiff has been damaged by the acts of DiversiFoam as aforesaid to an extent and in an amount which can only be determined by and through an accounting.

15. The acts of infringement by the defendants as aforesaid have been with knowledge of the existence of the aforesaid patent and willful so as to justify an increase in damages pursuant to 35 U.S.C. § 284.

COUNT III

PATENT INFRINGEMENT

16. The allegations of paragraphs 1-15 are incorporated into this count by reference as if set forth again in full.

17. Plaintiff is the owner by assignment of United States Patent No. 4,506,486, "Composite Siding Panel" (attached hereto as Exhibit C) which was duly issued by the United States Patent Office on March 26, 1985.

18. Defendant DiversiFoam, without authority or license from plaintiff, has within the six year period immediately prior to the filing of this complaint manufactured and sold insulation for siding products which correspond to the invention of U.S. Patent No. 4,506,486 in violation of plaintiff's rights as set forth in 35 U.S.C. § 271.

19. Plaintiff has been damaged by the acts of DiversiFoam as aforesaid to an extent and in an amount which can only be determined by and through an accounting.

Reissue Litigation
Group # 3621

20. The acts of infringement by the defendants as aforesaid have been with knowledge of the existence of the aforesaid patent and willful so as to justify an increase in damages pursuant to 35 U.S.C. § 284.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff ABCO, Inc. prays for the following relief:

- A. A judgment that Defendant DiversiFoam has infringed on plaintiff's rights in one or more of United States Patent Nos. 5,542,222, 5,664,376 and 4,506,486;
- B. A preliminary and permanent injunction enjoining defendant, its officers, employees and agents from further acts of infringement;
- C. An accounting for the damages owed to plaintiff as a consequence of defendant's acts of infringement;
- D. A trebling of the damages determined by and through the aforesaid accounting as a consequence of the knowing and willful nature of the infringement;
- E. A determination that this case is "exceptional" within the meaning of 35 U.S.C. § 285; and
- F. Such further relief as this Court may see fit to grant.

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JURY DEMAND

Plaintiff, ABCO, Inc. hereby demands that all issues be tried to a jury.

Respectfully submitted,

Phillip L. Kenner (#0018264)
Ray L. Weber (#0006497)
RENNER, KENNER, GRIEVE, BOBAK,
TAYLOR & WEBER, P.A.
Sixteenth Floor, First National Tower
Akron, Ohio 44308-1456
(330) 376-1242
Attorneys for Plaintiff

Thomas N. Young (P22656)
Andrew R. Basile (P10519)
Thomas E. Bejin (P56854)
YOUNG & BASILE, P.C.
3001 W. Big Beaver Rd.
Troy, MI 48084
(248) 649-3333
Attorneys for Plaintiff

Date: _____

CIVIL COVER SHEET

Reissue Litigation
Group # 3621

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

ABCO, Inc. d/b/a Progressive Foam Products
6753 Chestnut Ridge Road
Beach City, Ohio 44608

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

DiversiFoam Products, Inc.
9091 County Road 50
Rockford, Minnesota 55373

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Renner, Kenner, Greive, Bobak, Taylor &
Weber
1610 First National Tower
Akron, Ohio 44308 (330) 376-1242

ATTORNEYS (IF KNOWN)

Not known

II. BASIS OF JURISDICTION

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☐ 2 S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT

(PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 154 Stockholders' Suits <input type="checkbox"/> 155 Other Contract <input type="checkbox"/> 156 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 610 Selective Service <input type="checkbox"/> 650 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 980 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence HABEAS CORPUS: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 28 USC 7609	

VI. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

35 U.S.C. § 271

Plaintiff alleges that Defendant infringes its U.S. Patents Nos. 5,542,222, 5,664,376 and 4,506,486 by the manufacture and sale of post support members and siding panels used in building construction.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
☐ UNDER F.R.C.P. 23

DEMAND \$
unspecified

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ YES ☐ NO

VIII. RELATED CASE(S) (See instructions):
IF ANY

JUDGE _____

DOCKET NUMBER _____

DATE

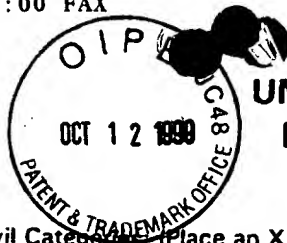
SIGNATURE OF ATTORNEY OF RECORD

December 16, 1998

PHILLIP L. KENNER

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____



UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF OHIO

Reissue Litigation
Group # 3621

I.

Civil Categories (Place an X in one category only).

1. (X) General Civil
2. () Administrative Review/Social Security
3. () Habeas Corpus Death Penalty

*If under Title 28, §2255, name the SENTENCING JUDGE: _____

CASE NUMBER: _____

II.

RELATED OR REFILED CASES. See LR 3.1 which provides in pertinent part: "If an action is filed or removed to this Court and assigned to a District Judge after which it is discontinued, dismissed or remanded to a State court, and subsequently refiled, it shall be assigned to the same Judge who received the initial case assignment without regard for the place of holding court in which the case was refiled. Counsel or a party without counsel shall be responsible for bringing such cases to the attention of the Court by responding to the questions included on the Civil Cover Sheet."

This action is () RELATED to another PENDING civil case. This action is () REFILED pursuant to LR 3.1.

If applicable, please indicate on the CIVIL COVER SHEET (form JS-44) in section VIII, the name of the Judge and case number.

III.

In accordance with Local Civil Rule 3.8, actions involving counties in the Eastern Division shall be filed at any of the divisional offices therein. Actions involving counties in the Western Division shall be filed at the Toledo office. For the purpose of determining the proper division, and for statistical reasons, the following information is requested.

ANSWER ONE PARAGRAPH ONLY. ANSWER PARAGRAPHS 1 THRU 3 IN ORDER. UPON FINDING WHICH PARAGRAPH APPLIES TO YOUR CASE, ANSWER IT AND STOP.

(1) **Resident defendant.** If the defendant resides in a county within this district, please set forth the name of such county _____ COUNTY _____
Corporation For the purpose of answering the above, a corporation is deemed to be a resident of that county in which it has its principal place of business in that district.

(2) **Non-Resident defendant.** If no defendant is a resident of a county in this district, please set forth the county wherein the cause of action arose or the event complained of occurred. _____ STARK COUNTY _____

(3) **Other Cases.** If no defendant is a resident of this district, or if the defendant is a corporation not having a principal place of business within the district, and the cause of action arose or the event complained of occurred outside this district, please set forth the county of the plaintiff's residence. _____ COUNTY _____

IV.

The Counties in the Northern District of Ohio are divided into divisions as shown below. After the county is determined in Section III, please check the appropriate division.

EASTERN DIVISION

- | | |
|----------------|---|
| (X) AKRON | (Counties: Carroll, Holmes, Portage, Stark, Summit, Tuscarawas and Wayne) |
| () CLEVELAND | (Counties: Ashland, Ashtabula, Crawford, Cuyahoga, Geauga, Lake, Lorain, Medina and Richland) |
| () YOUNGSTOWN | (Counties: Columbiana, Mahoning and Trumbull) |

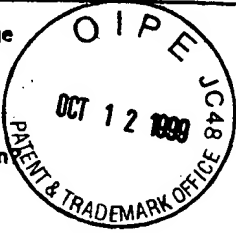
WESTERN DIVISION

- | | |
|------------|--|
| () TOLEDO | (Counties: Allen, Auglaize, Defiance, Erie, Fulton, Hancock, Hardin, Henry, Huron, Lucas, Marion, Mercer, Ottawa, Paulding, Putnam, Sandusky, Seneca, VanWert, Williams, Wood and Wyandot) |
|------------|--|

Reissue Litigation
Group #3621
DCM FORM NO. 1

**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OHIO
CIVIL CASE INFORMATION STATEMENT (CIS)**

CAPTION ABCO, Inc. d/b/a Progressive Foam Products <p style="text-align: center;">v.</p> DiversiFoam Products, Inc.	CASE NO.
Consent to the Jurisdiction of a Magistrate Judge YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> If YES, have You Filled Out the Appropriate Form YES <input type="checkbox"/> NO <input type="checkbox"/>	JUDGE: MAGISTRATE JUDGE:



TRACK ASSIGNMENT REQUESTED Administrative <input type="checkbox"/> Expedited <input type="checkbox"/> Standard <input checked="" type="checkbox"/> Complex <input type="checkbox"/> Mass Torts <input type="checkbox"/>
ALTERNATIVE DISPUTE RESOLUTION - IS THIS CASE SUITABLE FOR DISPOSITION BY ADR? IF SO, BY WHICH ADR PROCESS(ES): No
Early Neutral Evaluation <input type="checkbox"/> Mediation <input type="checkbox"/> Arbitration <input type="checkbox"/> Summary Jury Trial <input type="checkbox"/> Summary Bench <input type="checkbox"/> Other <input type="checkbox"/>
See LR 16.5(a) See LR 16.6(a) See LR 16.7(a) See LR 16.8(a) See LR 16.9(a) See LR 16.10
Is this case suitable for electronic filing? (See guidelines on reverse side.) Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> No, if no, why not <u>Some aspects of the case may be document intensive, and numerous oversize drawings may be involved.</u>
Briefly describe the case; include any special characteristics that may warrant extended discovery or accelerated disposition. If complex or expedited track assignment is requested, explain why. (Use Separate Sheet if Additional Space is Required):
RELATED CASE? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> CASE NO. _____ JUDGE _____

ATTORNEY NAME AND BAR I.D. NUMBER Phillip L. Kenner (#0018264) Ray L. Weber (#0006497)	TELEPHONE NUMBER (330) 376-1242
FIRM NAME AND ADDRESS Renner, Kenner, Greive, Bobak, Taylor & Weber 1610 First National Tower Akron, Ohio 44308	PARTY NAME - DOCUMENT TYPE ABCO, Inc. d/b/a Progressive Foam Products Complaint

The information provided on the CIS statement will be used for administrative purposes only LR 3.13(b)



CASE INFORMATION STATEMENT (CIS)
LR 3.13(b)
EVALUATION AND ASSIGNMENT OF CASES LR 16.2(b)

Reissue Litigation
Group #3621

The Court shall consider and apply the following factors in assigning cases to a particular track:

- EXPEDITED:**
- (1) Legal Issues: Few and Clear
 - (2) Required discovery: Limited
 - (3) Number of Real Parties in Interest: Few
 - (4) Number of Fact Witnesses: Up to five (5)
 - (5) Expert Witnesses: None
 - (6) Likely Trial Days: Less than five (5)
 - (7) Suitability for ADR: High
 - (8) Character and Nature of Damage Claim: Usually a fixed amount

- STANDARD:**
- (1) Legal Issues: More than a few, some unsettled
 - (2) Required Discovery: Routine
 - (3) Number of Real Parties in Interest: Up to five (5)
 - (4) Number of Fact Witnesses: Up to ten (10)
 - (5) Expert Witnesses: Two (2) or three (3)
 - (6) Likely Trial Days: five (5) to ten (10)
 - (7) Suitability for ADR: Moderate to high
 - (8) Character and Nature of Damage Claims: Routine

- COMPLEX:**
- (1) Legal Issues: Numerous, complicated and possibly unique
 - (2) Required Discovery: Extensive
 - (3) Number of Real Parties in Interest: More than five (5)
 - (4) Number of Witnesses: More than ten (10)
 - (5) Expert Witnesses: More than three (3)
 - (6) Likely Trial Days: More than ten (10)
 - (7) Suitability for ADR: Moderate
 - (8) Character and Nature of Damage Claims: Usually requiring expert testimony

ADMINISTRATIVE: Cases that, based on the Court's prior experience, are likely to result in default or consent judgment or can be resolved on the pleadings or by motion.

MASS TORT: Cases will be assigned to this track in accordance with a special management plan adopted by the Court.

ELECTRONIC FILING GUIDELINES

Electronic filing may be beneficial for a wide variety of cases. Cases best suited for electronic filing may include those in which:

- Parties filing or requiring service are reasonably identifiable and will be represented by counsel.
- Parties filing or requiring service have or can acquire access to a computer, the world wide web and, where necessary, a scanner.
- The number and/or size of documents that are likely to be scanned before they are electronically filed is not unreasonable. While scanned documents can be electronically filed, numerous or voluminous documents that need to be imaged may be cumbersome to create, transmit or retrieve. Computerized textual documents, however, may be unlimited in size, subject to Local Rules or Orders regarding page limitations.



FILED

99 AUG -4 PM 1:45

CLERK OF DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

Reissue Litigation
Group # 3621

Answer to
Counterclaim

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

SERVED: 8/4/99

Ans CChm: 8/24/99

Reminder: 8/17/99

ABCO, INC. d/b/a
PROGRESSIVE FOAM PRODUCTS,

Plaintiff,

v.

DIVERSIFOAM PRODUCTS, INC.,

Defendant.

) CASE NO. 5:98-CV-2910

) JUDGE GAUGHAN

) MAGISTRATE JUDGE STREEPY

) ANSWER AND COUNTERCLAIMS

) (Jury Trial Demanded)

Minnesota Diversified Products, Inc. ("Minnesota Diversified"), erroneously sued as DiversiFoam Products, Inc., for its Answer to the Complaint for Infringement of Patents (the "Complaint") of Plaintiff, ABCO, Inc. d/b/a Progressive Foam Products ("Plaintiff"), states as follows:

1. Minnesota Diversified lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1 of the Complaint and, therefore, denies the same.
2. With respect to paragraph 2 of the Complaint, Minnesota Diversified denies that "DiversiFoam Products, Inc." is a corporation of the State of Minnesota. Minnesota Diversified states that it is a Minnesota corporation with its principal place of business at 9091 County Road 50, Rockford, Minnesota 55373.
3. Minnesota Diversified denies the allegations of paragraph 3 of the Complaint.
4. With respect to paragraph 4 of the Complaint, Minnesota Diversified admits that this

action presents a federal question for the purposes of subject matter jurisdiction.

5. Minnesota Diversified denies the allegations of paragraph 5 of the Complaint.
6. With respect to paragraph 4 of the Complaint, Minnesota Diversified incorporates by reference its responses set forth in paragraphs 1-5 above.
7. Minnesota Diversified lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 7 of the Complaint and, therefore, denies the same.
8. Minnesota Diversified denies the allegations of paragraphs 8-10 of the Complaint.
9. With respect to paragraph 11 of the Complaint, Minnesota Diversified incorporates by reference its responses set forth in paragraphs 1-8 above.
10. Minnesota Diversified lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 12 of the Complaint and, therefore, denies the same.
11. Minnesota Diversified denies the allegations of paragraphs 13-15 of the Complaint.
12. With respect to paragraph 16 of the Complaint, Minnesota Diversified incorporates by reference its responses set forth in paragraphs 1-11 above.
13. Minnesota Diversified lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 17 of the Complaint and, therefore, denies the same.
14. Minnesota Diversified denies the allegations of paragraphs 18-20 of the Complaint.
15. Minnesota Diversified denies each and every allegation of the Complaint not expressly admitted herein.

Further answering the Complaint, and as further defenses to the matters set forth therein, Minnesota Diversified alleges as follows:

Defenses

1. Minnesota Diversified has not infringed any claim of any of the patents-in-suit, and is not liable for any infringement, either directly or indirectly, contributorily or otherwise, and has not induced any others to infringe said patents.
2. Plaintiff is precluded from asserting a claim scope that would cover any accused product or method in view of the prosecution history, specification and claims of the patents-in-suit, and the prior art.
3. Plaintiff's claims for damages and/or other relief are barred, in whole or in part, by the doctrine of equitable estoppel.
4. Plaintiff's claims for damages are barred, in whole or in part, by the doctrine of laches.
5. Each of the patents-in-suit, as properly construed and interpreted in light of the prior art, its prosecution history and otherwise, is invalid for failure to comply with the requirements for patentability as set forth in 35 U.S.C. §§ 101, 102, 103 and/or 112.
6. Plaintiff's claims for damages are barred in whole or in part by the statute of limitations, 35 U.S.C. § 286.
7. Plaintiff's claims for damages and/or other relief are barred by the doctrine of patent prosecution history estoppel.
8. To the extent that discovery reveals that Plaintiff knowingly or intentionally withheld or misrepresented material prior art or otherwise intentionally mislead the United States Patent and Trademark Office or otherwise violated 37 C.F. R. § 1.56 during the course of prosecution of the patents or any related patents, the patents-in-suit are unenforceable for inequitable conduct.
9. To the extent that discovery reveals, Plaintiff's claims for damages and/or other relief

are barred, and each of the patents-in-suit is void and unenforceable, by reason of one or more of the following:

- (1) The patent owner's unclean hands.
 - (2) The patent owner's misuse of the patent.
10. Plaintiff's claims for damages are barred, in whole or in part, by the patent owner's failure to mark goods with the patent number or otherwise give notice to Minnesota Diversified under 35 U.S.C. § 287 and/or because the patent owner falsely marked articles or falsely affixed to, or used in advertising in connection with an unpatented article, the word "patent" or words importing that the article is patented, for the purpose of deceiving the public.
 11. Plaintiff's claims for damages are barred, in whole or in part, by reason of Plaintiff's efforts to enforce patent claims known to be invalid, including conduct in violation of 35 U.S.C. §§ 253 and 288.
 12. Without waiving any attorney client privilege or work product doctrine, Minnesota Diversified asserts that Plaintiff's claims for damages are barred, in whole or in part, by Minnesota Diversified's good faith reliance on the advice of counsel.
 13. Plaintiff's claims for damages are barred, in whole or in part, by the doctrines of waiver and/or estoppel.
 14. Plaintiff's Complaint fails to state a claim upon which relief can be granted.
 15. This Court lacks jurisdiction over the person of Minnesota Diversified.
 16. This Court is not the proper venue for Plaintiff's claims.
 17. Minnesota Diversified reserves the right to assert additional defenses which may be disclosed during discovery in this action.

COUNTERCLAIMS

For its counterclaims against Plaintiff, Minnesota Diversified alleges as follows:

1. Minnesota Diversified incorporates by reference its answer and defenses as set forth in the above paragraphs as if fully rewritten herein.
2. Minnesota Diversified is a corporation organized and existing under the laws of the State of Minnesota and has a principal place of business at 9091 County Road 50, Rockford, Minnesota 55373.
3. Plaintiff alleges that it is a corporation of the State of Ohio, having a principal place of business at 6753 Chestnut Ridge Road, Beach City, Ohio 44608.
4. This Court has jurisdiction over the Plaintiff and the subject matter of these counterclaims pursuant to 28 U.S.C. §§ 1331, 1332, 1338(a), 2201 and 2202 and the United States patent laws, 35 U.S.C. §1, et seq.
5. Venue for the counterclaims is proper in this judicial district pursuant to 28 U.S.C. §1391.

COUNT ONE
(Declaratory Judgment)

6. Minnesota Diversified restates and realleges the allegations of paragraphs 1 through 5 of its counterclaims as if fully set forth herein.
7. Plaintiff asserts ownership of United States Patent No. 5,542,222, No. 5,644,376 and No. 4,506,486 (the "Patents").
8. Plaintiff has charged Minnesota Diversified in this action with infringement of each of the Patents.
9. There is a substantial, actual and continuing justiciable controversy between Minnesota Diversified and Plaintiff as to Plaintiff's right to maintain its suit for

infringement of the Patents, as to the validity and enforceability of the Patents, and as to whether Minnesota Diversified infringes any valid claim of any of the Patents.

10. Minnesota Diversified is entitled to a declaration that, to the extent that discovery reveals, the Patents and each claim thereof are void, invalid, unenforceable and/or not infringed by Minnesota Diversified for each of the reasons set forth above in paragraphs 1-17 of its defenses.
11. Minnesota Diversified is also entitled to a declaration that this is an exceptional case as defined in 35 U.S.C. § 285 such that Minnesota Diversified is entitled to an award of attorneys' fees.

COUNT TWO
(Violation of § 43(a) of Lanham Act)

12. Minnesota Diversified restates and realleges the allegations of paragraphs 1 through 11 of its counterclaims as if fully set forth herein.
13. Upon information and belief, Plaintiff has contacted at least one customer of Minnesota Diversified's and has made a false or misleading statement of fact in promotion of Plaintiff's goods and/or services.
14. Upon information and belief, Plaintiff has falsely represented to at least one customer that Minnesota Diversified's products infringe the patents-in-suit.
15. Plaintiff's misrepresentations were made in interstate commerce.
16. Plaintiff's misrepresentations were made in bad faith.
17. Plaintiff's misrepresentations actually deceive and/or are likely to deceive Minnesota Diversified's current and prospective customers concerning the scope of the patents-in-suit.
18. Plaintiff's misrepresentations are material in that they have been and are likely to

influence purchasing decisions and to dissuade customers from doing business with Minnesota Diversified.

19. Plaintiff's misrepresentations actually give and/or likely to give Minnesota Diversified's current and prospective customers the false impression that Plaintiff is the exclusive source for products of the type made by Minnesota Diversified and that Minnesota Diversified cannot manufacture or sell a non-infringing product.
20. As a result of Plaintiff's actions, Minnesota Diversified has suffered damages and has been injured in its relationships with current and prospective customers.

COUNT THREE
(False Marking)

21. Minnesota Diversified restates and realleges the allegations of paragraphs 1 through 20 of its counterclaims as if fully set forth herein.
22. In violation of 35 U.S.C. § 292, Plaintiff marked upon, affixed to, or used in advertising in connection with an unpatented article, the word "patent" or words importing that the article is patented, for the purpose of deceiving the public.
23. Plaintiff should be fined \$500 for each offense of false marking in accordance with 35 U.S.C. § 292(a) and Minnesota Diversified should be awarded its share of that fine pursuant to 35 U.S.C. § 292(b).

COUNT FOUR
(Tortious Interference)

24. Minnesota Diversified restates and realleges the allegations of paragraphs 1 through 23 of its counterclaims as if fully set forth herein.
25. Without a privilege to do so, Plaintiff has sought to induce or otherwise purposely cause a third person not to enter into or continue a business relationship with Minnesota Diversified, or not to perform a contract with Minnesota Diversified.

26. Plaintiff intentionally and unjustifiably interfered with Minnesota Diversified's business relationships to induce termination of the relationships.
27. Plaintiff has acted with malice and in bad faith.
28. As a direct and proximate result of Plaintiff's tortious or improper interference, Minnesota Diversified has suffered and seeks damages in excess of \$75,000, punitive damages, and its attorneys fees

COUNT FIVE
(Ohio Rev. Code Ch. 4165 Deceptive Trade Practices)

29. Minnesota Diversified restates and realleges the allegations of paragraphs 1 through 28 of its counterclaims as if fully set forth herein.
30. In violation of Ohio Rev. Code § 4165.02 (A) (7), Plaintiff has willfully and in bad faith engaged in deceptive trade practices in the course of its business by, *inter alia*, representing that Plaintiff and/or its goods have sponsorship, approval, characteristics, or benefits that it/they do not have.
31. In violation of Ohio Rev. Code § 4165.02 (A) (2), Plaintiff has willfully and in bad faith engaged in deceptive trade practices in the course of its business by, *inter alia*, causing a likelihood of confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services.
32. In violation of Ohio Rev. Code § 4165.02 (A) (10), Plaintiff has willfully and in bad faith engaged in deceptive trade practices in the course of its business by, *inter alia*, disparaging the goods, services, or business of Minnesota Diversified by making false representations of fact.
33. As a direct and proximate result of Plaintiff's actions, Minnesota Diversified has suffered and seeks damages in excess of \$75,000, as well as punitive damages,

injunctive relief and its reasonable attorney's fees.

COUNT SIX
(Ohio Common Law Unfair Trade Practices)

34. Minnesota Diversified restates and realleges the allegations of paragraphs 1 through 33 of its counterclaims as if fully set forth herein.
35. Plaintiff has willfully and in bad faith engaged in deceptive trade practices in the course of its business by, *inter alia*, representing that Plaintiff and/or its goods have sponsorship, approval, characteristics, or benefits that it/they do not have.
36. Plaintiff has willfully and in bad faith engaged in deceptive trade practices in the course of its business by, *inter alia*, causing a likelihood of confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services.
37. Plaintiff has willfully and in bad faith engaged in deceptive trade practices in the course of its business by, *inter alia*, disparaging the goods, services, or business of Minnesota Diversified by making false representations of fact.
38. As a direct and proximate result of Plaintiff's actions, Minnesota Diversified has suffered and seeks damages in excess of \$75,000, as well as punitive damages, injunctive relief and its reasonable attorney's fees.

COUNT SEVEN
(Unfair Competition)

39. Minnesota Diversified restates and realleges the allegations of paragraphs 1 through 38 of its counterclaims as if fully set forth herein.
40. Plaintiff has engaged in unfair competition by misrepresenting to third persons that Minnesota Diversified has infringed patents allegedly held by Plaintiff.
41. Plaintiff has engaged in such conduct, in bad faith, and with the intent to deter third

persons from doing business with Plaintiff.

42. As a direct and proximate result of Plaintiff's unfair competition, Minnesota Diversified has suffered and seeks damages.

WHEREFORE, Minnesota Diversified prays for judgment in its favor and against Plaintiff, providing that:

- a. The Complaint be dismissed with prejudice;
- b. that this Court declare this an exceptional case under 35 U.S.C. § 285, and award Minnesota Diversified its costs, together with reasonable attorneys' fees and all of its expenses for litigating this suit;
- c. With respect to Count One of Minnesota Diversified's Counterclaims:
 1. the court adjudge, declare and decree that Plaintiff has no right or authority to threaten or maintain suit against Minnesota Diversified or its customers or suppliers for alleged infringement of the patents-in-suit either directly or indirectly, contributorily or otherwise, and Minnesota Diversified has not induced any others to infringe said patents; that the patents-in-suit are void, invalid and unenforceable; and that no valid claim of any of the patents-in-suit is infringed by any product made, sold or used or any method used by Minnesota Diversified;
 2. the court preliminarily and permanently enjoin Plaintiff, its officers, agents, servants, employees and attorneys, and those persons in active concert or participation with them, who receive actual notice of the court's judgment, from initiating any infringement litigation and from threatening Minnesota Diversified or any of its customers, suppliers,

dealers, agents, servants or employees and any prospective, past or present sellers, dealers, suppliers, or users of Minnesota Diversified's products, with infringement litigation, or charging any of them, either verbally or in writing, with infringement with respect to the patents-in-suit because of the manufacture, use or sale or offering for sale of products sold or methods used by Minnesota Diversified,

3. that this Court declare that Plaintiff shall not recover any damages from Minnesota Diversified;
 4. that this Court declare this an exceptional case under 35 U.S.C. § 285, and award Minnesota Diversified its costs, together with reasonable attorneys' fees and all of its expenses for litigating this suit;
 5. that this Court declare that Minnesota Diversified shall be awarded such other and further relief as this Court may deem just and proper,
- d. With respect to Count Two of Minnesota Diversified's Counterclaims, Minnesota Diversified be awarded its damages as proved at trial, trebled, together with interest and the costs of this action, and attorneys' fees;
- e. With respect to Count Three of Minnesota Diversified's Counterclaims, that Plaintiff be fined \$500 for each offense of false marking in accordance with 35 U.S.C. § 292(a) and Minnesota Diversified be awarded its share of that fine pursuant to 35 U.S.C. § 292(b).
- e. With respect to Count Four of Minnesota Diversified's Counterclaims, Minnesota Diversified be awarded its damages as proved at trial, together with interest, punitive damages, injunctive relief, the costs of this action, and attorneys' fees;

- g. With respect to Count Five of Minnesota Diversified's Counterclaims, Minnesota Diversified be awarded its damages as proved at trial, together with punitive damages, interest and the costs of this action, and attorneys' fees;
- h. With respect to Count Six of Minnesota Diversified's Counterclaims, Minnesota Diversified be awarded its damages as proved at trial, together with punitive damages, interest and the costs of this action, and attorneys' fees;
- i. With respect to Count Seven of Minnesota Diversified's Counterclaims, Minnesota Diversified be awarded its damages as proved at trial, together with interest and the costs of this action, and attorneys' fees;
- j. Minnesota Diversified be awarded such other and further relief as this Court may deem just and appropriate.

Respectfully submitted,

Mark E. Staib

Mark E. Staib (0001369)

Erica L. Calderas (0064064)

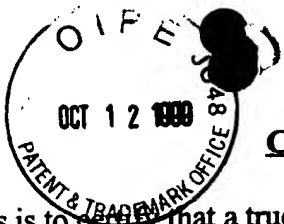
HAHN LOESER & PARKS LLP
3300 BP America Tower
200 Public Square
Cleveland, Ohio 44114-2301
(216) 621-0150

Attorneys for Defendant

JURY DEMAND

Minnesota Diversified hereby demands a trial by jury of the maximum number of jurors allowed by law on all issues so triable.

Mark E. Atail
One of the Attorneys for Defendant



Reissue Litigation
Group #3621

CERTIFICATE OF SERVICE

This is to certify that a true and accurate copy of the foregoing Answer and Counterclaims

has been sent via ordinary U.S. mail, postage prepaid, this 4th day of August, 1999 to:

Thomas N. Young
Andrew R. Basile
Thomas E. Bejin (also sent via facsimile)
YOUNG & BASILE, P.C.
3001 W. Big Beaver Road, Suite 624
Troy, MI 48084-3107
Attorneys for Plaintiff

Phillip L. Kenner
Ray L. Weber
RENNER, KENNER, GRIEVE, BOBAK,
TAYLOR & WEBER, L.P.A.
Sixteenth Floor, First National Tower
Akron, Ohio 44308-1456
Attorneys for Plaintiff


One of the Attorneys for Defendant



FILED

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

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CLERK OF DISTRICT COURT
NORTHERN DISTRICT OF OHIO

ABCO, INC. d/b/a PROGRESSIVE FOAM PRODUCTS,
an Ohio corporation,

CASE NO. 5:98-CV-2910-

JUDGE GAUGHAN

MAGISTRATE JUDGE STREEPY

Plaintiff-Counterclaim,

v.

DIVERSIFOAM PRODUCTS, INC.

PLAINTIFF'S ANSWERS
TO COUNTER CLAIMS

Defendant-
Counterclaimant

NOW COMES, Plaintiff ABCO, Inc. d/b/a/ Progressive Foam Products by and through
their Attorneys YOUNG & BASILE, P.C. and RENNER, KENNER, GRIEVE, BOBAK,
TAYLOR & WEBER, P.A. to respond to Defendant's Counterclaims as follows:

1. Plaintiff acknowledges that Defendant incorporates by reference its Answer and Defenses. Plaintiff denies that Defendant's defenses have merit.
2. Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegations and leaves Defendants to its proofs.
3. Plaintiff admits same.
4. Plaintiff admits that this Court has jurisdiction over the subject matter of Defendant's Counterclaims, but denies that those Counterclaims have merit.
5. Plaintiff admits same.
6. Plaintiff incorporates its responses to paragraphs 1 through 5.
7. Plaintiff admits same.

8. Plaintiff admits it charged Diversafoam with patent infringement, Plaintiff is without knowledge or information sufficient to form a belief as to whether Diversafoam is the same as Minnesota Diversafied.

9. Plaintiff admits same.

10. Plaintiff denies the allegations set forth in paragraph 10 of Defendant's Counterclaim.

11. Plaintiff denies the allegations set forth in paragraph 11 of Defendant's Counterclaim.

12. Plaintiff incorporates its responses to paragraphs 1 through 11 above.

13. Plaintiff denies the allegations set forth in paragraph 13 of Defendant's Counterclaim .

14. Plaintiff denies the allegations set forth in paragraph 14 of Defendant's Counterclaim.

15. Plaintiff denies the allegations set forth in paragraph 15 of Defendant's Counterclaim.

16. Plaintiff denies the allegations set forth in paragraph 16 of Defendant's Counterclaim.

17. Plaintiff denies the allegations set forth in paragraph 17 of Defendant's Counterclaim.

18. Plaintiff denies the allegations set forth in paragraph 18 of Defendant's Counterclaim.

19. Plaintiff denies the allegations set forth in paragraph 19 of Defendant's Counterclaim.
20. Plaintiff denies the allegations set forth in paragraph 20 of Defendant's Counterclaim.
21. Plaintiff incorporates its responses to paragraphs 1-20 above.
22. Plaintiff denies the allegations set forth in paragraph 21 of Defendant's Counterclaim.
23. Plaintiff denies the allegations set forth in paragraph 22 of Defendant's Counterclaim.
24. Plaintiff incorporates its responses to paragraphs 1-23 above.
25. Plaintiff denies the allegations set forth in paragraph 25 of Defendant's Counterclaim.
26. Plaintiff denies the allegations set forth in paragraph 26 of Defendant's Counterclaim.
27. Plaintiff denies the allegations set forth in paragraph 27 of Defendant's Counterclaim.
28. Plaintiff denies the allegations set forth in paragraph 28 of Defendant's Counterclaim.
29. Plaintiff incorporates its responses to paragraphs 1-28 above.
30. Plaintiff denies the allegations set forth in paragraph 30 of Defendant's Counterclaim.

31. Plaintiff denies the allegations set forth in paragraph 31 of Defendant's Counterclaim.

32. Plaintiff denies the allegations set forth in paragraph 32 of Defendant's Counterclaim.

33. Plaintiff denies the allegations set forth in paragraph 33 of Defendant's Counterclaim.

34. Plaintiff incorporates its responses to paragraphs 1-33 above.

35. Plaintiff denies the allegations set forth in paragraph 35 of Defendant's Counterclaim.

36. Plaintiff denies the allegations set forth in paragraph 36 of Defendant's Counterclaim.

37. Plaintiff denies the allegations set forth in paragraph 37 of Defendant's Counterclaim.

38. Plaintiff denies the allegations set forth in paragraph 38 of Defendant's Counterclaim.

39. Plaintiff incorporates its responses to paragraph 1-38 above.

40. Plaintiff denies the allegations set forth in paragraph 40 of Defendant's Counterclaim.

41. Plaintiff denies the allegations set forth in paragraph 41 of Defendant's Counterclaim.


42. Plaintiff denies the allegations set forth in paragraph 42 of Defendant's Counterclaim.

AFFIRMATIVE DEFENSES TO COUNTER CLAIMS

A. For the reason stated in Plaintiff's Complaint, Defendants had infringed U.S. Patent Nos. 5,542,222; 5,664,376; 4,506,486 which has damaged Plaintiff.

WHEREFORE, Plaintiff prays that Defendants' Counterclaims be dismissed for failure to state a cause upon which relief can be granted and that Defendants take nothing from their counterclaims and that Plaintiff be awarded its reasonable costs and attorneys fees.

Respectfully submitted,


Phillip L. Kerner
RENNER, KENNER, GRIEVE, BOBAK,
TAYLOR & WEBER, P.A.
Sixteenth Floor, First National Tower
Akron, Ohio 44308-1456
(330) 376-1242
Attorneys for Plaintiff

Thomas N. Young (P22656)
Andrew R. Basile (P10519)
Thomas E. Bejin (P56854)
YOUNG & BASILE, P.C.
3001 W. Big Beaver Rd.
Troy, MI 48084
(248) 649-3333
Attorneys for Plaintiff

Date: Aug. 23, 1999

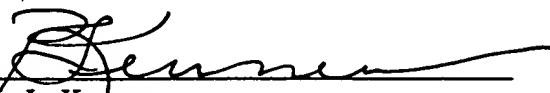


Reissue Litigation
Group # 3621

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing "Plaintiff's Answers To Counter Claims" has been sent to the following counsel of record via first class mail, postage prepaid, on this 23rd day of August, 1999.

Erica L. Calderas
Mark E. Staib
Hahn Loeser & Parks LLP
3300 BP America Tower
200 Public Square
Cleveland, OH 44114-2301


Phillip L. Kenner